The Solicitors' Journal

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Current Topics.

Housing.

IN reply to a number of questions in the Commons on 22nd July, the Minister of Health announced that the conference of local authorities which he had arranged in June on the increasing housing difficulties was composed of representatives of the Association of Municipal Corporations, the London County Council, the Metropolitan Boroughs Standing Joint Committee, the Urban District Councils Association and the Rural District Councils Association. He said that the report which the conference had sent to him stressed the need for immediate action and made specific recommendations. These dealt with the repair of houses, both to prevent further deterioration and to make additional accommodation available, and also with the more extended use of the requisitioning powers conferred by Defence Regulations and the establishment of an inter-departmental committee to review the whole field of rent restriction. The report had been considered by the Government, who accepted the principle that after the demands for building for war purposes had been met, housing should have the first call on immobile building labour. The Minister said that he was in consultation with the Ministry of Labour and National Service and with the Ministry of Works as to the best method of giving effect to this principle. In view of the present situation the Government had authorised him to delegate to local authorities power to requisition empty houses for the purpose of improving the conditions of families at present inadequately housed. Detailed instructions on the latter points would be issued to local authorities at an early date. The Government had also decided that an inter-departmental committee on rent restriction should be set up by the Secretary of State for Scotland and himself, and there would be a further announcement as to the constitution of this committee after the necessary consultations had taken place. He expressed his appreciation of the valuable assistance which had been given by the representatives of local authorities in the consideration of this very difficult problem. The report to which the Minister referred is signed by LORD LATHAM (L.C.C.), Sir MILES MITCHELL (Association of Municipal Corporations), Alderman C. W. KEY, M.P. (Metropolitan Boroughs Standing Joint Committee), Mr. ERNEST C. KING (Urban District Councils Association) and Mr. NEVILLE HOBSON (Rural District Councils Association). It states that the experience of authorities has shown that the situation has become progressively worse notwithstanding the rapidity and efficiency with which extensive war damage has been tackled. While the final remedy is to be found in the resumption of the building of new houses, the improvement of housing conditions by other methods should receive the highest possible priority. In rural districts new houses rather than repairs are required. These methods should include (1) priority of labour and materials for repair of houses and the prevention of further deterioration; (2) the provision of further accommodation by bringing into use houses which are or can be made suitable for use by works of repair and, in suitable cases, by the adaptation of large houses for the use of several families and the reconstruction of existing tenement houses into self-contained flats; (3) in view of the complaints which have been received as to rents which are being charged under the existing legislation for furnished and unfurnished accommodation, an immediate examination of the present position. There must be an improvement in the quality of accommodation as well as an increase in the amount available for family use. The opportunities of meeting this insistent demand for houses by the use of existing accommodation are limited, but there may be either houses already suitable for use as single family houses, subject sometimes to the execution of works of repair, or houses which require adaptation as self-contained flats, or shops or other premises which can suitably be converted into dwellings, or larger houses which can by works of conversion be made suitable for two or more families. It is suggested that it be left to the discretion of the individual local authority to determine in which way they could most suitably proceed subject to the imposition of some maximum figure of cost which would ensure that labour and materials were used to the best advantage. This figure should not be less than £250 per house with power to increase where accommodation for more than one family is involved. In some districts there are houses which were under construction, but have not been completed as a result of the war. Completion of these houses either by the owner or the local authority would provide additional accommodation in some cases for little or no more labour and materials than is involved in works of repair; subject to some prescribed limit of expenditure, priority should be given for the execution of this work. It is suggested that the Government exercise the requisitioning powers available or obtainable by Defence Regulations to the widest extent possible, so as to enable local authorities to requisition accommodation for workers and their families.

Further Proposals.

THE report states that another factor, closely concerning the housing of the working classes, is the operation of the Rent Restrictions Acts. In the case of unfurnished lettings the fact that the standard rent of a house which has not been let before the passing of the 1939 Act is the rent at which it is first let enables the landlord to obtain a scarcity rent. Furthermore, local authorities have no means of ascertaining the standard rent and have no power to require the landlord to produce evidence of the standard rent, or to take proceedings against landlords seeking to charge more than the recoverable rent, i.e., the standard rent with any permitted increases. In the case of furnished lettings local authorities have power to prosecute a landlord for charging an "extortionate" rent, but the absence of a definition of the word "extortionate" adds to the difficulties of the local authority in proving its case. The difficulties which arise under it now are considerable. These and other difficulties will increase as the war continues and go on increasing after the war until large numbers of new houses have been built. Action is, therefore, necessary, but it is recognised that rent restrictions questions always raise acute controversy. It is recommended, therefore, that an inter-departmental committee should be set up at once and that whilst it should be charged with a review of the whole field and requested to make recommendations as to the legislation required to deal adequately with conditions after the war, it should be asked to make an interim report at as early a date as is practicable on the question of furnished lettings and other matters of urgency. Other recommendations are (1) the maximum amount of labour available from the quota for civil building purposes should be concentrated on repair and maintenance; that as men are released from Government contracts they should be added to this quota; and that the total should be maintained at the highest possible level by any necessary reservations of the men in question; (2) that labour must be left to the small contractors; (3) that the materials necessary should be made readily available; (4) that where the local authority wish to repair war damage or have issued a statutory notice for the execution of works of maintenance and repair to a house under either the Housing or Public Health Acts or have certified that works of repair or maintenance to a house are essential to avoid danger to health or grave deterioration of structure, the execution of this work should be given a special priority (apart from the execution of first-aid repairs); (5) that this priority should be accorded both to houses already occupied and to houses which can be brought into occupation by the execution of the works specified; (6) that local authorities must be allowed to retain an adequate technical and supervisory staff; (7) that local authorities should have discretion to determine in which way they should proceed to secure improvements in their particular districts, subject to a maximum figure of cost which would ensure that labour and materials were used to

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the best advantage. This should not be less than £250 per house with power to increase where accommodation for more than one family is involved; (8) that to secure the foregoing, a new scheme, which must be simple and should follow the lines of the scheme for first-aid repairs, should be drawn up to cover all works of repair and adaptation.

Workmen's Compensation Rates.

DISSATISFACTION with the present level of workmen's compensation payments has led to the announcement by the Government of a proposed new Workmen's Compensation Bill in the Commons on 28th July. On that date, Mr. MORRISON stated that the Bill followed on lengthy discussions with the Trades Union Congress and the British Employers' Confederation and embodied increases which were intended to be of a temporary nature. They were to be introduced without prejudice to the introduction of a revised scheme of workmen's compensation which the Government had under consideration in connection with the Beveridge Report. The proposed increases are as follows: A totally disabled married man will receive 5s. a week more in compensation in respect of his wife and 10s. a week more if his disablement continues for more than thirteen weeks. The maximum payment is increased to 50s. a week. Children's allowances will be raised from the present rates (4s. for each of the first two children and 3s. for each subsequent child) to 5s. a week for each child. An unmarried man totally incapacitated will receive 5s. a week more after the first thirteen weeks of disablement, making the maximum payment 40s. a week. For a short period of disablement he will receive 35s. a week, as at present. The increased weekly compensation payment, excluding children's allowances, is limited to a maximum of two-thirds of average weekly earnings. The maximum amount where children's allowances are paid is limited to seven-eighths of average weekly earnings. In cases of partial incapacity the benefits will be proportionate to those payable in cases of total incapacity. The lump sum maximum payment to an adult wholly dependent on a man killed in an accident is to be increased from £300 to £400. Where children also are left the aggregate maximum payment is to be increased from £600 to £700. Compensation rates for women will be the same as those for men. The new rates will apply not only in new cases, but also to those already receiving compensation. It is estimated that the aggregated annual payments in respect of workmen's compensation will be increased from £16,000,000 to £20,000,000 when the measure is passed.

Draft Solicitors' Accounts Rules.

THE Council of The Law Society publishes, in the July issue of *The Law Society's Gazette*, the draft Solicitors' Accounts Rules and Solicitors' Trust Accounts Rules required to be made by the Council under s. 18 of the Solicitors Act, 1941. It is stated that the Council will not make either set of rules before 15th September, 1943, at the earliest. Members are reminded that the operation of the Solicitors' Trust Account Rules is confined to those cases where a solicitor is a sole trustee, or is a co-trustee only with a partner, clerk or servant of his, or with more than one of such persons, and that they do not apply to every trust of which a solicitor is solicitor trustee. The two sets of rules should be read in conjunction with each other and with the definitions contained in s. 81 of the Solicitors Act, 1932, and s. 29 of the Solicitors Act, 1941. The opportunity has been taken of making certain amendments in the Solicitors' Accounts Rules to deal with points of difficulty which have arisen in practice on those rules. The attention of members is also drawn to s. 1 of the 1941 Act, which is to come into operation after the war, as to the accountant's certificate of compliance with the Solicitors' Accounts Rules to be forwarded by every solicitor, with certain exceptions (see s. 18 (3)) to The Law Society. The rules deal with payments into and drawings out of clients' accounts and trust bank accounts, the keeping of books and accounts, and the Council's powers to enforce the rules, particularly with regard to inspection of books and documents. It is to be noted on this last point that in both sets of draft rules the provision under which the Council may require the production of books, accounts and documents enables them to act either (*a*) on their own motion; or (*b*) on a written statement or request transmitted to them by or on behalf of the governing body of a provincial law society or a committee thereof; or (*c*) on a written complaint lodged with them by a third party.

Women Solicitors and Clerks: Deferment.

THE Council of The Law Society announces in the July issue of *The Law Society's Gazette*, that applications for deferment of women who are affected by the Registration for Employment Order, should be made to the local office of the Ministry of Labour and National Service, in writing, on receipt of notification E.D. 378 (W.). In the case of those affected by the National Service (No. 2) Act, 1941, application must be made, after the receipt of N.S. 52 (W.), on Form N.S. 300 (W.), which is obtainable from the local office of the Ministry of Labour and National Service, and should be returned to that office. It has not yet been decided whether women born in 1924 will be regarded as having registered under the Registration for Employment Order or the National Service Acts, but it is understood that these women will be treated in the same way as those who were born in 1923 (see *ante*, p. 106 and the March issue of *The Law Society's Gazette*, p. 19). The Council point out that when making representations to the Lord Chancellor's Department at the House of Lords, the solicitor should give the full names of the woman concerned, her national identity registration number, date of birth, particulars of the District Man Power Board, and such particulars as the solicitor may consider justify his submission that the woman is a pivotal worker, or an essential shorthand-typist.

The Forces and Law Studies.

EVERY encouragement and assistance is given by the service departments to members of the Forces who wish to pursue legal and other studies in this country, and the correspondence courses which were instituted at an early date in the war and carried on under the ægis of Council of Legal Education and of The Law Society, and with the unpaid assistance of members of both branches of the profession, have attained some degree of success. The number of students at present is 2,800, but the scheme is to some extent hampered by the scarcity of text-books. At first there were cases in which the commencement of a student's work had been delayed, and even prevented, by the impossibility of providing a text-book in time. In some cases it is the experience of tutors that students have been confused at the outset of their studies by introduction to a heavy reference work instead of to an elementary text-book which is more suitable for a beginner. The text-book difficulty is still not quite overcome, as the July issue of *The Law Society's Gazette* indicates, and the War Office is only able to provide one text-book on loan for each student on each subject. The further difficulty, however, has arisen that students have little or no access to the law reports, as there are many students in areas which are outside the reach of the facilities kindly provided by many of the Provincial Law Societies. The Council of The Law Society expresses the hope that in areas where there is no law library easily accessible individual members of the Society may be prepared to allow students under the scheme to have access to their own law reports or other works of reference. All offers of such facilities will be gratefully received and should be forwarded to the Secretary of The Law Society.

Emergency Law.

THE teaching staff of The Law Society's School of Law have prepared notes on the emergency legislation for the use of students, and the July issue of *The Law Society's Gazette* states that these notes are now available for the use of solicitors and articled clerks who are engaged in national service and are out of touch with recent changes in the law. The notes, which give only a brief outline, and not a complete statement of the law, deal with, *inter alia*: Compensation (Defence) Act, 1939; Courts (Emergency Powers) Act, 1943, Landlord and Tenant (War Damage) Act, 1939, Rent and Mortgage Interest Restrictions Act, 1939, Execution of Trusts (Emergency Provisions) Act, 1939 and the various statutory modifications thereof. Solicitors and articled clerks who wish to have a copy of the notes are invited to apply to the Secretary of The Law Society, and a small charge not exceeding 2s. 6d. will be made, the precise charge depending on the demand.

Recent Decisions.

In *Debi Prasad Sharma and Deva Das Gandhi* v. *The King Emperor* in the Judicial Committee of the Privy Council, on 26th July (*The Times*, 27th July), the Committee advised His Majesty to allow the appeal of defendants who had been found guilty of contempt of court in a newspaper article, in which the Chief Justice of the Allahabad High Court was alleged, untruly but without knowledge of the falsity of the statement, to have committed an ill-advised act in writing to his subordinate judges asking them to collect for war funds. Their lordships held that this was not a contempt affecting the administration of justice.

In *In re Corelli*, on 29th July (*The Times*, 30th July), COHEN, J., held that a bequest in a will of the house of the deceased to be kept up in perpetuity for the benefit of distinguished visitors from overseas to be selected by the Society of Authors (all actors and actresses and persons connected with the stage to be excluded) was not a valid charitable bequest as its dominant motive was merely to establish a hotel for the entertainment of distinguished foreigners. The trusts, therefore, not being charitable, were void for remoteness.

In *Lyon and Wife* v. *Daily Telegraph, Ltd.*, on 29th July (*The Times*, 30th July), the Court of Appeal (SCOTT, MACKINNON and GODDARD, L.JJ.) held, allowing an appeal from a judgment of HILBERY, J., that a criticism of a broadcast was fair comment, and that although the writer of the newspaper letter containing the criticism gave a false name and address, the absence of verification of the address by the newspaper was not malice so as to destroy the newspaper's plea of fair comment. GODDARD, L.J., added that anonymity in itself was no evidence of malice.

Criminal Law and Practice.

Inquiries as to Means to pay Fines.

THE statutory provisions dealing with this subject were recently considered by a Divisional Court (*R.* v. *Dunne, ex parte Sinett* [1943] 1 K.B. 516), when an unsuccessful application was made to quash an order made by the stipendiary magistrate at Bow Street for the payment of £500 on each of three summonses forthwith, or, in default of payment, for committal to prison on each of the three summonses for three months, the terms of imprisonment with regard to the first and third summonses to run concurrently.

The summonses were against a company and a director of the company, and charged the selling of goods in excess of quota, contrary to the Limitation of Supplies (Miscellaneous) (No. 5) Order, 1940. The company had been fined a total of £20,000. The director was the applicant for the writ of *certiorari* to quash the order, and he was fined £500 on each summons. He was given three months in which to pay the fines. After the expiry of the three months there was an inquiry as to his means at the Bow Street Court, under s. 1 (3) of the Money Payments (Justices Procedure) Act, 1935, before the magistrate who had heard the earlier proceedings. The magistrate asked counsel for the applicant what had become of the large sums of money received by the company and handled by the applicant, as to which evidence had been given at the trial. Counsel's reply was that the company's only asset was an office chair. Counsel also stated that the applicant had no employment or prospect of employment, and that his only means was a sum of £50 which he was prepared to pay into court forthwith as part payment. The magistrate did not ask the applicant to give evidence because (as he said in his affidavit) he saw no reason to suppose that any examination by him would elicit further information.

The Criminal Justice Administration Act, 1914, s. 1, prohibits the issue of a warrant for committal to prison in respect of non-payment of a sum adjudged to be due by a court of summary jurisdiction, unless the court which passed the sentence is satisfied that the person to be committed is possessed of sufficient means to enable him to pay the sum forthwith, or unless he does not ask for time to pay, on being asked by the court whether he wants time to pay, or he does not satisfy the court that he has a fixed abode, or unless the court for any other special reason expressly directs that no time be given. Under s. 1 (3) and s. 15 of the Money Payments (Justices Procedure) Act, 1935, such a warrant may not issue in the case of a defendant who has been allowed time to pay, unless inquiry has been made by the court as to his means in his presence.

Of the two arguments on behalf of the applicant, the first was that the applicant not having given evidence there was no material on which the magistrate could make the order for the issue of the warrant of committal. As to this, the court held that the magistrate was entitled to take into consideration the matters elicited in the earlier proceedings. The second point was that s. 1 (1) of the Criminal Justice Administration Act, 1914, should be read into the Act of 1935, so as to show that the onus lay on the prosecution to prove that the defendant had means to enable him to pay the fines forthwith. Humphreys, J., pointed out that s. 1 (1) of the 1914 Act referred to the making of an order forthwith at the time of the conviction, and not to a case where the defendant had been allowed time for payment. He added, however, that the point might arise where the tribunal which held the inquiry as to means was a different tribunal from that which was sitting at the time of the conviction (s. 15 of the 1935 Act permits a different tribunal to consider the question of means in certain circumstances), but that it did not arise where the same magistrate was sitting on both occasions. His lordship pointed out that counsel had, in his discretion, not called evidence on the issue of means, and the magistrate was entitled to take into consideration facts proved at the earlier hearing.

The court distinguished *R.* v. *Woking JJ.* [1942] 2 K.B. 248, on the ground that that was a case where the justices who held the inquiry as to means were different from the justices who sat at the original hearing. That, too, was a case of convictions under the Limitation of Supplies Order. The fines were £150 on each of ten summonses. The applicant in that case asked that an order that he should be committed to prison in default of payment of his fines in full before a specified date, should be quashed. At the inquiry as to means the only evidence before the court was that of the applicant, who said that he was without means, that he had filed his petition in bankruptcy, and that he had a large deficiency. The court held that the only point for their decision was whether the magistrates had satisfied the law when they made the inquiry, or whether they must find, before making a committal order, that the person to be committed had means. They held that the magistrates must find that he had means, and quashed the order for committal, as the applicant's evidence as to lack of means was uncontradicted.

The two cases do not appear to have much, if anything in common. The *Woking* case certainly does not decide that the magistrates making the order of committal must have evidence of means from the prosecution or that they must have it from the defence before making the order. That there must be some evidence is obvious, as otherwise there cannot be an inquiry. But if the court making the order of committal is the same court as that which tried the case originally, there is no doubt now, as a result of *R.* v. *Dunne*, that it is entitled to act upon evidence called at the original trial.

A Conveyancer's Diary.

Personal Injuries (Emergency Provisions) Act, 1939.

Two readers have communicated with me to inquire what relation, if any, the Personal Injuries (Emergency Provisions) Act, 1939, bears to the subject dealt with in *Leanse* v. *Lord Egerton* [1943] 1 K.B. 323, which was discussed in two recent articles in this column. It is pointed out that "nuisance is one of the causes of action specifically mentioned in s. 3 and the injury suffered by the plaintiff in *Leanse* v. *Lord Egerton* was, it is at least arguable, as much a 'war injury' caused by the impact of something dropped from an enemy aircraft as was the injury the subject of *Taylor* v. *Sims*" [1942] W.N. 124.

Neither *Taylor* v. *Sims* nor the Act was referred to in *Leanse* v. *Lord Egerton* either in argument or in the judgment, if the Law Reports and the "All England Reports" are accurate. I must confess that I had forgotten *Taylor* v. *Sims*, which appears in the *Weekly Notes*, with an asterisk indicating that it is not worth a place in the reports, and it never occurred to me that the Personal Injuries Act could apply. But the point now put certainly deserves serious examination.

The material provisions of the Act are as follows: It was passed on 3rd September, 1939, and is an "Act to make provision as respects certain personal injuries sustained during the period of the present emergency." Section 1 empowers the Minister of Pensions to make a scheme providing for "the making of payments in respect of the following injuries sustained during the period of the present emergency, namely (*a*) war injuries sustained by gainfully occupied persons . . . and by persons of such other classes as may be specified; and (*b*) war service injuries sustained by civil defence volunteers." The expressions "war injuries" and "war service injury" are defined as follows in s. 8: "'War injuries' means physical injuries—(*a*) caused by—(i) the discharge of any missile (including liquids and gas); or (ii) the use of any weapon, explosive or other noxious thing; or (iii) the doing of any other injurious act; either by the enemy or in combating the enemy or in repelling an imagined attack by the enemy; or (*b*) caused by the impact on any person or property of any enemy aircraft, or any aircraft belonging to, or held by any person on behalf of or for the benefit of, His Majesty or any allied power, or any part of, or anything dropped from, any such aircraft." "'War service injury' in relation to a civil defence volunteer, means any physical injury which the Minister certifies to have been shown to his satisfaction to have arisen out of and in the course of the performance by the volunteer of his duties as a member of the civil defence organisation to which he belonged at the time when the injury was sustained, and (except in the case of a war injury) not to have arisen out of and in the course of his employment in any other capacity."

The provisions set out above show quite clearly what the Act was intended to do: it was passed on the first day of a war in which, for the first time, serious hostile attack by air on the civilian population was expected, and organisations had been set up for dealing with the situation thus expected to arise. The Legislature empowered the Government to start a compensation scheme analogous to workmen's compensation for the civil defence personnel and also a scheme for giving some compensation to members of the public who suffered from air-raid injuries (including injury by poison gas, which was receiving a good deal of public attention at that date). The definitions of "war injury" and "war service injury" were fairly wide, so that they would, for instance, include within "war injury" injury from one of our own aircraft which crashed owing to its pilot's negligence in the course of operations against the enemy; and within "war service injury" damage to one warden by the carelessness of another in handling a practice bomb during training. Most war injuries, of course, give rise to no cause of action which is of much practical value, since the prospective defendant is usually an unidentified enemy pilot. Thus, in the great majority of those cases, the only relief is that given by the Act. But granted that a scheme was once in being for compensating those who suffer war injuries or war service injuries, it was doubtless felt that all victims ought to be treated alike; otherwise there was a danger of a good deal of rather profitless litigation by such victims as believed themselves to have another remedy against an available defendant. Hence, I imagine, the enactment of s. 3, which provides:—

> "In respect of a war injury sustained during the period of the present emergency by any person, and in respect of a war service injury sustained during that period by a civil defence volunteer, no such compensation or damages shall be payable, whether to the person injured or to any other person, as apart from the provisions of this subsection—(*a*) would be payable under the Workmen's Compensation Acts . . . (*b*) would, whether by virtue of any enactment, by virtue of any contract,

or at common law, be payable—(i) in the case of a war injury, by any person; or (ii) in the case of a war service injury sustained by a civil defence volunteer, by any person who has any responsibility in connection with his duties as a volunteer or by any other civil defence volunteer; on the ground that the injury in question was attributable to some negligence, nuisance or breach of duty for which the person by whom the compensation or damages would be payable is responsible."

Now, I do not think that it would have occurred to me from a reading of those sections that they could have anything to do with the case of *Leanse* v. *Lord Egerton*; the damage caused by the falling of a piece of glass from a building three or four days after the building had been bombed is not, on the ordinary meaning of English, "caused by" the discharge of the bomb or other missile; the words in the definition seem to refer clearly to damage caused by the "incident" and as part of the "incident." If one looks to more remote damage than that occurring in the *res gestae*, where does one stop? To take an example, suppose that the piece of glass had fallen before the plaintiff in *Leanse* v. *Lord Egerton* passed by, and suppose that it was lying on the pavement and that she had been barefoot and had cut her feet, is that a "war injury"? Or test the matter another way. If what actually did happen was a "war injury" for the purposes of s. 3, it necessarily was also a "war injury" for those of s. 1. But can anyone imagine the Minister of Pensions giving the plaintiff compensation under his scheme? I do not feel much doubt of this position even apart from the actual finding of the court. But that finding puts the matter beyond doubt: the defendant was held to have *continued* a nuisance and was liable because he had done so. The gist of the action was continuance, an act or neglect of the defendant (I feel doubt whether the case was altogether correct on this point, but the actual finding shows why the Personal Injuries Act was not in point). The cause of action was continuance, not the damage caused by any bomb. I think that the true view is that s. 3 of the Act is so much compressed and covers so much ground that it is not always obvious how it should be construed.

I was therefore a good deal surprised to see that in *Taylor* v. *Sims* a defendant had escaped liability, partly by pleading this Act, in respect of injuries caused by the collapse of the floor of a bomb-damaged building a substantial time after the original "incident." The report in the *Weekly Notes* simply says that the collapse was due to "blast," that "Lewis, J., regarded "blast" as included within "impact" in the definition of "war injury," and held that therefore the Act applied. There is also a report in the "All England Reports," but I do not think that it takes the matter further. There were at least two substantial points of common law in the case, and Lewis, J., dealt with them first. They alone were ample for his decision. The point under the Act has the appearance of having been brought in at the end of the judgment, because it had been introduced in argument as an alternative argument by the side which was anyhow the winning one. There is no account of the argument and the material passage of the judgment is very short. I should very much doubt whether it will be treated as a binding authority upon the Act, a view in which I am supported by the fact that neither the Lord Chief Justice nor the experienced counsel concerned in *Leanse* v. *Lord Egerton* seem to have considered it worth mentioning. It seems very unlikely that none of them had heard of *Taylor* v. *Sims*, which, if it is to be taken seriously on this point, must have given much food for thought in the Temple. If it were ever necessary to do so, it would, in my opinion, be right to advise that there would be a good and reasonable prospect that *Taylor* v. *Sims* would be disregarded, or, if the case went high enough, overruled. Once the meaning of "war injury" is extended beyond injuries caused in the actual "incident," I see no end to the inquiry, since many of the things which happen in 1943 are indirectly the consequence of the events of 1940. The crux is that an event which is not the subject of proceedings by reason of s. 3, must give rise under s. 1 to a claim for compensation. If the affair is not one which would give ground for compensation, it must be one in respect of which s. 3 provides no defence.

Obituary.

MR. H. R. BARRETT.

Mr. Herbert Roper Barrett, solicitor, of Messrs. Joseph Barrett and Son, solicitors, of Leadenhall Street, E.C.3, died recently, aged seventy. He was admitted in 1897. He will be remembered chiefly for his connection with lawn tennis, and in particular for his part in regaining, after twenty-one years, the Davis Cup in the year 1933. On that occasion he was the non-playing captain of the British team. No other player has maintained his place in the front rank of players and represented his country over so long a period. In 1934 he was elected president of the Lawn Tennis Association. His record of public service in the City of London was a very fine one. He served on various committees; became Vestry Clerk of St. Peter's-upon-Cornhill in 1907; a member of the Corporation of the City of London for the Lime Street Ward in 1910, and was one of H.M. Lieutenants for the City of London.

Landlord and Tenant Notebook.

Tenant's Option to Re-enter.

THE article entitled "Tenant's Option to Re-enter" which was contributed to our issue of 17th July (87 SOL. J. 251) mentions the possibility of tenants having moved their whole homes and furniture to new addresses after enemy action, in which circumstances it may be a question of fact whether the tenancy has been abandoned.

In such cases the landlord may find it useful to adopt the procedure provided by the Deserted Tenements Act, 1817 (57 Geo. 3, c. 52), amending s. 16 of the Distress for Rent Act, 1737 (11 Geo. 2, c. 19). The latter is mainly concerned with fraudulent avoidance of distress, but contains a number of sections which would nowadays be headed "Miscellaneous Provisions." Of these, s. 16, after reciting that landlords are often great sufferers by tenants running away in arrear, and not only suffering the demised premises to lie uncultivated without any distress thereon, but also refusing to deliver up the possession of the demised premises, whereby the landlords are put to the expense and delay of recovering in ejectment, goes on to provide a summary method of determining tenancies. The provision was originally limited in scope to premises let at a rack-rent or "full three-fourths of the yearly value" and cases in which rent was one year in arrear. Then, if the premises are left uncultivated or unoccupied, "so as no sufficient distress can be had to countervail the arrears of rent," the landlord makes a request to two local justices to "go upon and view the same" and they "affix, or cause to be affixed, on the most notorious part of the premises, notice in writing, what day (at the distance of fourteen days at least) they will return to take a second view thereof." If on the occasion of the second view the arrears of rent are not forthcoming, or there is still insufficient distress, the justices may put the landlord "into the possession of the said demised premises, and the lease thereof to such tenant, as to any demise therein contained only, shall from thenceforth *become void*." By s. 17, proceedings may be reviewed at the next assizes or (London and Middlesex) by the High Court, which may order restitution to tenants, together with expenses and costs; or, if the justices are upheld, award up to £5 costs "for the frivolous appeal."

After it had been held, in *Ex parte Pilton* (1818), 1 B. & Ald. 569, that the section would not operate if there were no forfeiture clause (this seems plausible in view of the "whereby the landlords are put to the expense and delay of recovering in ejectment," which suggests that the whole idea was to save calling upon John Doe in circumstances in which that device would otherwise serve), the amending Act of 1817 extended it to cases in which there was no power of re-entry. At the same time it reduced the period of one year to one half-year, and declared that the procedure applied to any demise or agreement, whether written or verbal.

If we do not hear much about these enactments, it is probably because though, strictly speaking, a tenancy cannot be "abandoned," in practice most landlords who find themselves in the position described are willing to run the risk of resuming possession and letting to someone else—and that person is, of course, estopped from relying upon the omission. In the case of tenants of small properties dying intestate alone, it must frequently happen that, though by law the terms vest in the President of the Probate, Divorce and Admiralty Division of the High Court (Administration of Estates Act, 1925, ss. 9 and 55 (1) (xv)) until administration is granted, that condition resolutive is never fulfilled and tenancies of the property are granted and accepted without reference to the learned President's functions.

But our contributor's observations suggest that under present conditions there may be rather more demand for the statutory remedy described. This being so, a short review of the few decisions to which it has given rise may be of use.

On the question of onus of proof of lack of distress, *Re Emmett* (1850), 14 J.P. 530, is instructive. The facts were that on the occasion of the first view the justices looked through the closed shutters of a lower room, saw that that room was empty, and, declaring themselves satisfied, fixed the usual notices; and that on the second occasion the tenant was actually seen on the premises (but made no offer of arrears of rent). The learned judge of assize held that the state of the room actually seen was presumptive evidence; it was open to the tenant to rebut the inference, but if he did not, the court would not interfere.

Another point dealt with in this case was whether the landlord, who had actually recovered judgment for rent in the county court, was within the statute, it being suggested that he had no right of distress and the "no sufficient distress can be had to countervail the arrears of rent" requirement was unsatisfied. The learned judge declined to accede to this argument (*Seven* v. *Mihill* (1756), 1 Keny. 370, decided that a right of execution can be waived so as to revive the right to distrain.)

However, for present purposes, the first point is the more useful; true, enemy action may sometimes facilitate the investigation, but if in fact the actual premises have not been damaged but tenants are merely said to have moved with their furniture, does not appear that justices are given any right of forcible entry.

So, but for *Re Emmett*, the requirement would be less easy to satisfy than the "no sufficient distress was *to be found*" of the Common Law Procedure Act, 1852; this condition is the more easily fulfilled if the premises are locked up.

Other authorities deal with the position of magistrates. In *Basten* v. *Carew* (1825), 3 B. & C. 649, an aggrieved tenant brought an action against the justices; they put in a record of the proceedings, showing that they had complied with the Acts, and this was held to be a complete answer. The same thing happened in *Ashcroft* v. *Bourne* (1832), 3 B. & A. 684. A disappointed landlord sought a mandamus in *Ex parte Fuller* (1840), 8 Dowl. 535, when it appeared that the justices had been bluffed by the tenant on the occasion of the second view, having accepted his contention that his presence deprived them of jurisdiction; but the court declined to issue a mandamus to order them to deliver possession.

As to landlords who may abuse the process, in the course of *Basten* v. *Carew*, *supra*, Bayley, J., uttered a dictum to the effect that an action "on the case" would lie. Accordingly in *Ashcroft* v. *Bourne*, *supra*, the action, which was for trespass, was brought against the landlord (and the constables) as well as the justices; but it was held that the record protected all. That is, a landlord was not responsible for erroneous adjudication by justices to whom he had submitted his case fairly and honestly; if proceedings had been maliciously (i.e., without probable cause) commenced or persisted in, that might be the ground of an action. I will discuss the possible effects of a landlord's omitting to avail himself of the Deserted Tenements Act, 1817, in a later article.

Our County Court Letter.

Remuneration of Doctors.

In *Lee* v. *Mitchell*, at Northampton County Court, the claim was for £78 15s. for professional services rendered. The plaintiff's case was that in April, 1941, he had performed the second part of an operation for the removal of the prostate gland of the defendant. The first part of the operation was done in 1940, when the defendant was eighty-one. Prior to the second operation the defendant had signed the usual printed form in use at the Northampton General Hospital, viz.: "I consent to an operation, the general nature of which has been explained to me. I also consent to any variation or extension which may appear necessary during the course of the operation." The plaintiff had hoped to perform the operation, without difficulty, with a special instrument. It transpired, however, that the defendant had a stricture, and the operation had to be on a more extensive scale. It was successful, and the effect had been to prolong the defendant's life. No query as to the nature of the operation was raised until November, 1942, when the plaintiff's solicitors applied for payment of the fee. No denial of the defendant's consent was suggested, and no dispute as to the amount of the fee was raised, until 1943, when a defence was delivered to the specially indorsed writ, prior to the remission to the county court. The defendant's case was that he only underwent the operation on the understanding that it would be a minor operation. No knife was to be used, there would be no blood-letting, and it would only take twenty minutes. Instead, a major operation was performed. The spinal anæsthetic only took the feeling from the defendant's legs, and not from his stomach. For two hours he was in acute agony on the operating table, and had been in worse condition since the operation, having now a weakness of the bowels. The defendant had no recollection of signing the form. It was submitted on behalf of the defendant, that the form of consent was too wide to be valid. It would enable an operation for removal of tonsils to be made the occasion for a mastoid operation. A patient who went in to have all his teeth out might be said to have also consented, under such a wide form, to have his appendix removed. It was not enough for the plaintiff to prove that the operation was for the benefit of the defendant. The latter should have been given the opportunity of considering whether he would undergo a major operation, when the minor operation was found inadequate. There was no *consensus ad idem*, sufficient to found a claim in contract. The fee was also more appropriate to London than the provinces. His Honour Judge Forbes observed that the success of the operation was obvious from the defendant's presence in court, and the manner in which he had given a specimen of his signature. It was an untenable proposition that the patient should be allowed to recover from the anæsthetic and give a decision about the future course of the operation. The latter was the surgeon's responsibility, and the plaintiff had acted in accordance with recognised medical practice. The defendant had given a valid consent by signing the hospital form. Judgment was given for the plaintiff, with costs.

The leading case on consent is *Slater* v. *Baker and Stapleton* (1769), 2 Wilson 359. At p. 362 the judgment states: "It is reasonable that a patient should be told what is about to be done to him, that he may take courage and put himself in such a situation as to enable him to undergo an operation." This was before the days of anæsthetics, but the principle still holds good.

The leading case on extension or variation of an operation is *Beatty* v. *Cullingworth* (*The Times*, 17th and 18th November, 1896). This turned on whether a patient consented to the removal of both her ovaries or only one. Mr. Justice Hawkins, in summing up to the jury, said that if a doctor, with a desire to do his best for the patient, undertook an operation, it was a humane thing for him to do all in his power to remove the mischief, if the patient had not given definite instructions not to operate. No surgeon could operate if fettered by a condition that, although he considered the operation necessary, he was not to perform it if he found slightly more disease than he anticipated.

Points in Practice.

Questions from solicitors who are REGISTERED ANNUAL SUBSCRIBERS are answered, without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the staff, are responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 29–31, Breams Buildings, E.C.4, and contain the name and address of the subscriber, and a stamped addressed envelope.

Income Tax—Annual Payments on Account of Legacy.

Q. A wishes to make a will leaving B £200 per annum for life, and is considering setting aside a fund to answer this annuity, with power in the event of the income being insufficient to resort to capital, but realises that if capital has to be resorted to such payments out of capital will be liable to income tax, so that with income tax at 10s. in the £ double the amount of capital will have to be sold to produce the sum required. He has thought of making provision in another way, namely, he has worked out B's expectation of life and proposes to leave B a legacy of £4,000 (free of duty) coupled with a direction to the trustees that the trustees shall postpone payment of the legacy in full and make yearly payments of £200 on account, the trustees investing by compound interest the balance for the time remaining owing, such accumulations falling into A's residuary estate on satisfaction of B's legacy in full or earlier death, with a proviso that if B dies before his legacy is paid in full the balance shall fall into A's residuary estate. In the circumstances stated, would there be any liability on the part of the trustees to deduct income tax from the annual payments? Would the annual payments in B's hands be treated as capital or income?

A. Save in a case which is covered by a decision of at least the Court of Appeal, our opinion on a point of income tax law is always given subject to the reservation that no one can predict what the final decision of higher courts will be on a particular set of facts. See recent case of *Sothern-Smith* v. *Clancy* [1941] 1 K.B. 276, where the Court of Appeal reversed a decision of Lawrence, J. This case might be referred to as having some bearing. In our opinion a bequest in the form suggested is so clearly one of which the intention is to give an annual sum for B's life, that it would be held to be an annuity payable under A's will, and therefore the executors would be liable to account to the Revenue for annual tax. We think that probably a different decision might be arrived at if B or B's estate was to be entitled to the £4,000 and interest in any event, i.e., that any balance should go to B's estate and not to A's residuary estate. This would require careful wording if B was to be prevented from claiming payment of the £4,000 in one sum. We would suggest it would be better for A to direct his executors to purchase an annuity for B. Even then B would be entitled to claim the value, unless he was prohibited by a forfeiture clause if he claimed the money. An alternative might be the settlement of a sum to be invested in a particular way with power to trustees in their discretion if they considered the needs of B warranted it to make advances from time to time out of capital, and let A leave his trustees a letter expressly saying it was not to operate as a trust, stating his wishes that trustees should exercise these powers when they found B's net income from all sources after deduction of tax was under £*x*.

Option to Purchase.

Q. By agreement dated 10th September, 1938, a house is let for a period of two years from the 11th September, 1938, at the annual rent of £100, and the tenant was given an option to purchase at £2,750 at any time during the tenancy. By subsequent correspondence the tenancy was extended each year for one year, with the same option to purchase; and on the 25th March, 1943, the tenant wrote asking for a further year's extension (i.e., from 12th September, 1943, to 11th September, 1944) with the same option. The landlord is not willing to agree to this, and the tenant will therefore presumably hold as a statutory tenant from the 11th September next. Will the existing provision as to the option to purchase automatically attach to the statutory tenancy? Reference to any reported cases on this point will be appreciated.

A. The question is answered in the affirmative. See the following cases: *McIlroy* v. *Clements* [1923] W.N. 149; *Bradbury* v. *Grimble* [1920] 2 Ch. 548; *Rider* v. *Ford* [1923] 1 Ch. 541. If the premises are outside the Rent Acts (a question which appears to require further investigation), see *Sherwood* v. *Tucker* [1924] 2 Ch. 440 (unfavourable to tenant); and *Batchelor* v. *Murphy* [1926] A.C. 63 (favourable to tenant).

To-day and Yesterday.

LEGAL CALENDAR.

August 2.—In 1884 England was in the grip of the Fenian terror, which reached a fresh height when a portmanteaux deposited in the left luggage office at Victoria Station blew up, causing much damage. After a widespread hunt the police arrested two Irishmen named Egan and Daly with explosives in their possession, and some letters suggesting a connection with the outrage. On the 2nd August they were convicted at the Warwick Assizes of being in possession of dynamite. Daly was sentenced to penal servitude for life and Egan for twenty years.

August 3.—Lewis Avershaw was a desperate character who was eventually run to earth by the police at "The Three Brewers," in Southwark. He thereupon drew a brace of pistols and shot one of the officers dead and wounded another in the head. When he was condemned to death he insulted the judge, and while awaiting execution he made pictures on the walls of his cell with the juice of some black cherries, representing the robberies he had committed. He went to execution entirely unconcerned, with his shirt thrown open and a flower in his mouth. He chatted all the time with those riding beside the cart, laughing and nodding to acquaintances in the immense crowd. He was hanged on Kennington Common on the 3rd August, 1795. With him suffered John Little, an attendant at the laboratory at Kew Palace who had murdered an old lady and gentleman in the village for the property they kept at home.

August 4.—On the 4th August, 1779, at Newcastle "was tried before Mr. Justice Buller and a special jury an issue directed by the Court of Exchequer in the long contested cause between the rector of Simonburn and the occupiers of ancient farms within that parish, relative to a claim made by the former of agistment tithe in kind. The question for the determination of the jury in this issue was whether a modus of 1d., which Dr. Scott insisted was for hay-tithe, did or did not extend to grass agisted or eaten by unprofitable cattle. After a long hearing, the jury gave a verdict against the rector upon the clearest evidence, to the entire satisfaction of the learned judge who tried the cause."

August 5.—John Verney was the youngest son of Lord Willoughby de Broke. He was called to the Bar by the Middle Temple, became a judge in South Wales, Attorney-General to the Queen, Chief Justice of Chester, and finally Master of the Rolls. Almost three years after this last appointment he died on the 5th August, 1741.

August 6.—About ten o'clock one Saturday night Mrs. Stephens was seen sitting behind the counter of her shop at Woodford. About eleven her neighbour heard her door violently slammed and someone running away. On Monday morning her shop did not open and she was found stabbed to death with a bloodstained knife beside her. Of the money she was counting the coppers remained, but the silver and the notes were gone. Her new silver watch was also missing and this led to the discovery of the murderer. At the Castle Inn there was an ostler called William Cornwell. He had formerly worked in Holborn, run into debt and gone away. Shortly after the murder he called at a public-house near Lincoln's Inn Fields where he owed money and made a settlement with the landlord, giving him a silver watch in exchange for his old metal one and half a crown. The number on the watch proved it to be that of the dead woman. There was a lot of circumstantial evidence against him, including a pair of bloodstained breeches found in the stable, though his story was that he had found the watch by the pond near the inn. He was tried at Chelmsford on the 6th August, 1813. He smiled all the time and after sentence of death said with a grin: "Thank you, my lord, and gentlemen." Till his execution he asserted his innocence.

August 7.—Private William Brown of the Royal Artillery was an exemplary soldier, batman to Lieutenant Webber. One day some of his master's things were missing and he was suspected. All that night he stayed out and on returning asked to be taken to the guard-house as he had committed a crime for which he would certainly be hanged. There he told the sergeant-major that he had met a little girl who cried when she saw him, that he had taken her in his arms, strangled her with his finger and thumb and left her on some stone steps. When search was made the body of Isabella M'Guire, aged seven, was found, just as he had said. He was tried at Maidstone on the 7th August, 1812, and though some question was raised as to his having been under the influence of laudanum, he was condemned to death.

August 8.—"The Murder in the Red Barn," the killing of Maria Marten at Polstead in Suffolk, still echoes in popular consciousness more than a century after. Yet the death of a not over virtuous village girl at the hands of a commonplace young farmer anxious to conceal the consequences of their association and preserve his respectability is more sordid than romantic. Almost a year after William Corder had shot her and buried her remains beneath the earthen floor of his barn, they were discovered. He was tried in the Shire Hall at Bury St. Edmunds on the 8th August, 1828. Lord Chief Baron Alexander had ordered that no one should be admitted to the court till he had taken his seat, and consequently as he passed from his carriage he was all but swept off his feet by a seething crowd of barristers, magistrates, constables, jurors and others striving to get in. The proceedings were delayed an hour and a half, and so great was the throng that the external stone basements of the windows were filled with spectators; tremendous showers of rain falling on the umbrellas of the women made such a noise as to interrupt the hearing more than once. Several windows were broken by sheer pressure. Corder was duly convicted and hanged.

Two Legal Titles.

As the formidable Lord Thurlow reminded his fellow peers on a celebrated occasion, there are in the House of Lords very many noblemen who owe their rank to the legal distinction of their ancestors. By a curious coincidence two of these have died but recently, the Earl of Cottenham, descended from a Lord Chancellor, and Lord Abinger, descended from a Chief Baron of the Exchequer. Sir Charles Pepys became Lord Cottenham in January, 1836, on his elevation to the Woolsack; Sir James Scarlett became Lord Abinger in January, 1835. While at the Bar both went into Parliament as Whigs; both owed their seats there to the good offices of Earl Fitzwilliam; and both became Law Officers of the Crown. But there the resemblance ended. Pepys was of Lincoln's Inn, a Chancery man, cold and sedate in his manner, accurate and logical but without the ready eloquence of a great advocate or the able politician; he was a sound lawyer and made an exceedingly able judge. Scarlett was of the Inner Temple and the common law. Whether with judges or juries he had a longer success at the Bar than almost any man up till that time. He had no showy or spectacular eloquence and the punsters also said that "Scarlett was not deep-read," but he had an astonishingly intimate knowledge of human nature, a quick perception and complete self-possession. Handsome, gentlemanly, with a good voice and an easy manner, he had a special knack with juries. He said he seldom addressed them collectively but generally selected one man, by no means always the foreman, with whom he reasoned, placing himself in mental communication with him and going on till he felt he had convinced him. Even judges yielded to his spell, and at one time the Bar felt that Lord Tenterden was far too much under his influence. As Attorney-General he made his mark on the administration of justice by obtaining the fixing of the legal terms and the incorporation of Wales in the ordinary circuit system. He was the first Chief Baron of the Exchequer to be made a peer, but his habit of mind was not impartial enough to make him a really good judge. He died suddenly on circuit at Bury in 1844. Lord Cottenham died at Pietra Santa, in the Duchy of Lucca, in 1851.

WAR DAMAGE REPAIRS.

The War Damage Commission issued in the *Edinburgh Gazette* of Friday, 23rd July, 1943, a notice which affects the following areas in the County of Dunbarton:—

Area No. 1, Duntocher—An area comprising all lands and premises fronting or abutting the existing roadway from Duntocher to Courthill (route 810) which lies between its junction with Old Street and its junction with Cochno Road.

Area No. 2, Old Kilpatrick—An area comprising all lands and premises fronting or abutting the existing roadway from Glasgow to Dumbarton (route A814) which lies between its junction with Gavinburn Place and its junction with Stewart Street.

A plan of the areas may be inspected at the Council Offices, County Buildings, Dumbarton.

The notice is issued under s. 20 (2) of the War Damage Act, 1943, whereby provision is made for securing that the making of payments by the Commission in respect of war damage shall have regard to the public interest. The publication of the notice in the *Gazette* is, therefore, of great importance to all those with interests in war damaged property, and particularly to those professionally concerned with work on such properties, since upon them must, in practice, fall the responsibility, on behalf of their clients, for seeing that the requirements of the Act are complied with.

The effect of the notice is that any person proposing to execute any works for the repair of war damage (other than temporary works) in the named areas must first inform the Commission. That body in its turn will consult the appropriate local and planning authorities to ascertain whether the carrying out of the proposed works would conform with their intentions regarding re-planning and other public interests. The condition laid down regarding notification will be strictly enforced, and the carrying out of any works in the named areas, without prior notification to the Commission, will render the person doing such works liable to forfeit the right to repayment by the Commission. The powers conferred upon the Commission by the Act are exercisable only in direct relation to war damage.

Wills and Bequests.

Mr. Walter Henry Borlase, solicitor, of Penzance, left £36,371, with net personalty £32,711. He left £500 and after other bequests residue to West Cornwall Hospital.

Mr. G. E. W. Woolsey, solicitor, of Swannington Hall, Norfolk, left £35,266, with net personalty £32,953.

Notes of Cases.

APPEALS FROM COUNTY COURT.

The Royal Albion Hotel, Ltd.

MacKinnon and du Parcq, L.JJ., and Uthwatt, J. 1st June, 1943.

Emergency legislation—Application by private limited company for liabilities adjustment order—Insolvent company with heavy secured debts—Interim order made—Conditions on which order can be made—Where burden should fall as between creditors and members and officers who are well-to-do—Liabilities (War-Time Adjustment) Act, 1941 (4 & 5 *Geo.* 6, *c.* 24), *ss.* 3, 4, 6, 10 *and* 15.

Creditors' appeal against an interim liabilities adjustment order made by the county court judge at Brighton in favour of a limited company under the Liabilities (War-Time Adjustment) Act, 1941.

The order followed on a protection order and a consequent reference to the company's affairs to the liabilities adjustment officer for investigation and report. The company was private, it had a capital of £1,000, and it conducted the business of one hotel. In June, 1937, all the shares were bought by E and his parents from P, who at the same time sold to the company the freehold equipment and goodwill for £57,000. The purchase-money was provided as follows: The appellants were mortgagees of the freehold goodwill and licences for £30,000 repayable on 25th December, 1937. P was holder of a first debenture for £10,000 conferring a fixed charge on the freehold and a floating charge on the other assets. A further £15,000 loan was secured by second debentures for £18,000 in favour of E and his parents. Barclays Bank were loan creditors for £4,000 secured by E's guarantee and the deposit by him of the second debentures. At the date of the hearing E owned all the shares but one, which his wife held. On 12th July, 1940, the hotel was closed as trading at a loss was anticipated. In July, 1942, the hotel was requisitioned, the equipment being put into store. The compensation for requisition of the freeholds was fixed at £1,500 per year. The interest on the first mortgage and first debentures had been paid down to June, 1940. The interest in arrear down to June, 1942, was £4,300. The unsecured indebtedness for various sums such as income tax, rates, directors' fees, etc., aggregated to £11,500. The company's only asset was its claim for expenditure in the removal of its furniture and equipment estimated at £1,100. The company's liabilities exceeded its assets by over £8,000, assessing the assets at the price paid and not counting the interest on the first mortgage and first debentures. The company made a net profit of £2,028 for the year ending November, 1937, a loss of £303 for the next year, and for the next year a profit of £355. From 1937 to 1940, £1,500 a year was spent on non-recurring repairs and renewals. The report of the liabilities adjustment officer recommended that after provision had been made for outgoings to preserve the assets the compensation for requisitioning the freeholds should be distributed periodically among the secured creditors, that the interest on the first mortgage be reduced to a sum equal to the annual value of the freehold, that the same reduction should be made in the interest on the first debentures, and that a certain twenty-one years' lease be disclaimed and immediate vacant possession be given. The order made on 28th January provided for the appointment of a receiver for the period of occupation under the requisitioning order, for his security and remuneration, for the payment by him of insurance premiums and removal and storage expenses, postponement of payment of other debts, disclaimer of the twenty-one years' lease, further consideration to be adjourned to a date to be fixed by the registrar, at the end of six months or the period of requisitioning, whichever was the shorter.

Uthwatt, J., delivering the judgment of the court, said that the learned county court judge was wrong in thinking that he had jurisdiction to make an interim order without first being satisfied that the conditions had been fulfilled under which he could made a liabilities adjustment order at all. Section 10 of the Liabilities (War-Time Adjustment) Act, 1941, showed that this was not so, and s. 3 (6) showed that the court had to be satisfied that the debtor's troubles were due to war circumstances and that it was practicable and proper to deal with the case under the Act. Under s. 15, as the debtor was a company, the court had to be satisfied that the object of the application was to enable the company to recover its business and that there was a reasonable expectation that such recovery was possible. In considering whether it was practicable and proper to deal with the affairs of the company the court must have regard to the constitution and affairs of the company and the means of its members and officers. The examination to decide whether the conditions to be fulfilled before an order can be made was obviously not undertaken. The question whether it was practicable and proper to deal with the debtor's affairs under the Act could not be answered in the affirmative unless the court had envisaged, at least in broad outline, some general scheme in compliance with the Act to settle the debtor's affairs. In exercising the power to order postponement the court must have regard not only to the prospects of the business but also to the likelihood of ultimate benefit to the creditors as well as to the debtor. An order for postponement would here be in the interests of the company alone. Whether further capital could be obtained to an extent that would render it possible to conclude that the case could rationally be brought within the Act remained open. The court wished to make three general observations: First, the object of the Act was not to postpone the evil day when commitments must be met, but to provide for the liquidation of commitments so as to enable the debtor to make a fresh start, untrammelled by the difficulties to which war circumstances had subjected him without undergoing the stigma of bankruptcy (ss. 3 (6) and 4 (1)). The point of s. 4 (3) was not merely to enable a business to be carried on or debts to be postponed, but to enable that to be done as incident to the adjustment and settlement of the debtor's affairs. Secondly, in considering an application by a private company the court should consider how far the members and officers are dependent on the continuance of the company for their means of livelihood, and also where some of the members or officers were well endowed, whether it was reasonable to expect them to come to the aid of the company rather than to allow the burden to fall on the shoulders of its creditors. Lastly, it was the duty of the liabilities adjustment officer in his report to make proposals for the adjustment and settlement of the debtor's affairs if it seemed practicable. The appeal was allowed, the interim order was discharged, and the application for a liabilities adjustment order was ordered to be re-heard

Counsel: *R. W. Jennings; B. E. Dutton Briant; P. C. Lamb.*

Solicitors: *Wilkinson, Howlett & Moorhouse; Boxall & Boxall; Palmer, Bull & Mant*, for *Lewis, Holman & Farndell*, Lewes.

[Reported by Maurice Share, Esq., Barrister-at-Law.]

CHANCERY DIVISION.

In re Dalziel; Midland Bank Executor and Trustee Company, Ltd. *v.* St. Bartholomew's Hospital.

Cohen, J. 29th June, 1943.

Will—Construction—Bequest to charity subject to a direction to maintain a mausoleum—Gift over on failure to comply with direction—Validity of bequest.

Adjourned summons.

The will of the testatrix, who died in 1940, contained a bequest in the following terms: "I give to the Governors of St. Bartholomew's Hospital the sum of £20,000 free of all death duties to be added to and form part of the existing discretionary fund and I give this legacy upon and subject to the condition that the said Governors of St. Bartholomew's Hospital shall use the income to arise from this legacy as far as is necessary for the upkeep of the said mausoleum in Highgate Cemetery and the garden surrounding the same that they shall keep the same in good repair and the inscriptions thereon legible and to rebuild the same when requisite and if they shall fail to carry out this request I give the said sum of £20,000 to such other of the charities named in this my will as my trustees may select and as shall be willing to accept the legacy subject to the above conditions." In 1935 the testatrix had given the sum of £2,439 2½ per cent. Consols to the hospital and the hospital by a resolution of the board of governors had declared that the stock should "be retained as a permanent investment the income therefrom to be credited to the 'discretionary fund,' subject to a first charge of such sum or sums as may from time to time be necessary to defray the costs of the upkeep of the D. Mausoleum in H. cemetery." It appeared from the evidence that the hospital's "discretionary fund" was held upon trust to be applied at the discretion of the governors for the purposes of the hospital, whether these purposes were purposes for which the general funds of the hospital were applicable or not. By this summons the trustees of the will asked whether the bequest in favour of the hospital was valid.

Cohen, J., said that it was clear that the discretionary fund of the hospital could be applied for the upkeep of the D. Mausoleum. The upkeep of the mausoleum was not a charitable object, it followed that the bequest to the hospital failed (*In re Tyler* [1891] 3 Ch. D. 252). The gift over in favour of other charities also failed (*Chamberlayne* v. *Brockett*, 8 Ch. D. 206). The effect of the imposition of the condition as to the upkeep of the mausoleum did not therefore arise, but he would state his conclusions. As he read the clause, it did not merely impose a condition subsequent. It amounted to a direction that the income of the fund should be applied in the first instance for the purposes of the mausoleum. He could not construe it as imposing merely a moral obligation. The decisions in the tomb cases appeared either to be based on the trifling amount involved (*Fisk* v. *Attorney-General*, 4 Eq. 521), or upon the view that the testator intended to impose a moral obligation only (*In re Rogerson* [1901] 1 Ch. 715). These cases were distinguishable from the present case. In none of them was there a gift over on failure to maintain the tomb. That distinction was vital. The real foundation of the tomb cases was that the court felt itself able to construe the provisions in the various wills as imposing only a moral obligation. Now the gift over was only consistent with the view that the obligation to repair the mausoleum was not merely a moral obligation, with the consequence that the whole gift failed. The facts in this case were like those in *In re Porter* [1925] Ch. 746. The obligation as to rebuilding was not limited to rebuilding out of income. The trust involved not only the income but the *corpus*. The gift failed *in toto*.

Counsel: *Wilfrid M. Hunt; E. M. Winterbotham; J. A. Reid; A. P. Vanneck; C. V. Rawlence; H. O. Danckwerts.*

Solicitors: *Ashurst, Morris, Crisp & Co.; Wilde, Sapte & Co.; E. F. Turner & Sons; Treasury Solicitor.*

[Reported by Miss B. A. Bicknell, Barrister-at-Law.]

In re Lord Westbury's Settlement; Westmacott *v.* Bethell.

Cohen, J. 29th June, 1943.

Settlement—Construction—Annuities charged on capital—Arrears—Method of payment—Rate at which tax deducted—Income Tax Act, 1918 (8 & 9 *Geo.* 5, *c.* 40), *All Schedules Rules, rr.* 19, 21.

Adjourned summons.

By a settlement dated the 24th September, 1925, the settlor directed the trustees thereof to hold certain investments upon trust to pay to his wife and daughter-in-law £500 a year each during their respective lives. Complicated trusts followed providing for the application of surplus income and for the devolution of capital. The settlor died in 1930. The annuities were paid until 1929, when the income of the trust fund became insufficient to pay them in full and they fell into arrears. From time to time sums were paid on account of the annuities. The settlor's widow died in 1941,

and on her death the arrears due to her exceeded £2,000; a similar sum was due to the other annuitant. This summons was taken out by the trustees of the settlement asking, first, whether the annuities were charged on the capital of the trust fund. The summons came before Farwell, J., and he held they were so charged. The summons then again came on for hearing raising the further question as to the rate of income tax payable in respect of the arrears and how past and current income was to be applied.

COHEN, J., said that in so far as the arrears came out of corpus it was not disputed that under the Income Tax Act, 1918, All Schedules Rules, r. 21, tax must be deducted at the standard rate when the payment was made. But it was argued on behalf of the surviving annuitant that she did not want them so raised and preferred that they should be paid, as and when possible, out of the income of the fund, with the result that, although the fund out of which they were paid would have suffered tax at 10s. in the £, the trustees in making the payment would only be entitled under r. 19 of the All Schedules Rules to deduct tax at the rate in force at the time when the arrears had accrued. That contention was not supported by the trustees nor by the other person interested in the fund. It was clear from the decision *In re Croxton; Ferrers* v. *Croxton* [1915] 2 Ch. 290, that the proper course was to treat the annuity as payable annually and each year to apply the income which was available in keeping down the annuity and, if there was any deficiency, to make up that deficiency out of corpus, starting *de novo* with the next year. It was the duty of the trustees to pay off the arrears of the annuities out of capital. The next question was as to what should be done with the payments which had been made on account. It was suggested that, on the analogy of the rule in *Clayton's* case, each payment should be made in satisfaction of the earlier portion of the arrears. Having regard to the decision *In re Croxton, supra*, this would not be right. Had the trust been strictly administered, the arrears would in each year have been made good out of capital and the income of the subsequent year would have been applied in paying the annuity of the then current year, before any balance would be available for wiping out arrears. He would accordingly direct that the payments made on account should be treated as having been made in the first instance in satisfaction of the instalments falling due during that year.

COUNSEL: *H. H. King; A. C. Nesbitt; A. P. Vanneck; A. J. Belsham; J. H. Stamp.*

SOLICITORS: *Tylee & Co.; Rooper & Whately; Inland Revenue.*

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

In re **Price; Midland Bank Executor and Trustee Co., Ltd. v. Harwood.**

Cohen, J. 6th July, 1943.

Will—Construction—Bequest to Anthroposophical Society for carrying on the teachings of the founder—Whether bequest valid—Perpetuity.

Adjourned summons.

The testatrix, by her will, dated the 13th June, 1940, directed her trustee to hold one-half of her residuary estate upon trust for "the Anthroposophical Society of Great Britain to be used at the discretion of the chairman and executive council of the society for carrying on the teachings of Dr. Rudolf Steiner." The testatrix died on 26th July, 1940. This summons was taken out by the executors of the will to have it determined whether the residuary gift in favour of the society was a valid gift. The statutes of the society provided that "the aim of the society is to form, in the words of Rudolf Steiner, a union of human beings who desire to further the life of the soul, both in individual and in human society on a basis of a true knowledge of the spiritual world." The objects of the society were not, however, limited to those in its statutes, for its rules gave power to alter its objects.

COHEN, J., said that the testatrix clearly intended to limit the purposes for which her benefaction could be applied to carrying on the teachings of Rudolf Steiner. He was unable therefore to hold that it was an absolute gift to the society. He accordingly turned to the argument for the society based on the decision *In re Drummond* [1914] 2 Ch. 90. Eve, J., there held that the legacy in question to the Old Bradfordians Club to be used as the committee of the club should think best in the interests of the club was not subject to any trust which prevented the committee from spending it. It, therefore, was a valid gift. That case was approved by the House of Lords in *Macaulay* v. *O'Donnell* (vol. 775 of the records of "Cases on Appeals to the House of Lords"). There was nothing in the present will to restrict the freedom of the society to expend capital and income on the stated purpose. It was argued that the words "carrying on" in the gift corresponded to the word "maintenance" in *Macaulay* v. *O'Donnell*, and necessarily implied permanence, and that permanence could only be achieved by endowment. He did not think the words "carrying on" justified him in imposing any limitation on the application of capital. It was further argued that the bequest could not be upheld, as there was such uncertainty as to the purposes for which the gift could be expended. The catalogue of Rudolf Steiner's writings covered a wide range but, although the range of subjects a man might claim to teach might cast doubt on the value of the instruction he gave, it did not entitle the court to hold that his teaching was so uncertain that a gift to carry it on must fail. He had come to the conclusion that the principle of *In re Drummond, supra*, applied, and the gift to the society was a valid gift. As he had come to the conclusion that the gift did not tend to a perpetuity, it was not necessary for him to decide whether the bequest was charitable. He would have been inclined to hold that it was.

COUNSEL: *J. A. Hay; Roxburgh*, K.C., and *Belsham; Vaisey*, K.C., and *Salt; Myles; Danckwerts.*

SOLICITORS: *Geo. W. Bower & Son; Barfield & Barfield; Treasury Solicitor.*

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

In re **Gosset's Settlement; Gribble** *v.* **Lloyds Bank, Ltd.**

Cohen, J. 9th July, 1943.

Settlement—Construction—Limitation to "first and other" sons in tail male—Principle of construction applicable to wills applied to settlements.

Adjourned summons.

By a settlement dated the 11th April, 1876, certain hereditaments were settled in strict settlement to the use of the settlor's eldest son for life, with successive remainders to his sons in tail with similar provisions in favour of the younger sons of the settlor and their issue. The settlement then provided in default of issue of any son the property was to be held "to the use of the first daughter of A [the settlor] for life and after her decease to the use of her first and other sons and of the heirs male of the body and bodies of such first and other sons successively and in remainder and in default of such issue to the use of the second and every other daughter and daughters of the said A severally and successively and in remainder according to their respective seniorities and after her and their decease to the use of her and their first and other sons and of the several and respective heirs male of the body and bodies of all and every such son and sons lawfully issuing the son and sons of the elder of such daughters and the heirs male of his and their body and respective bodies issuing being always to be preferred to and to take before the younger of such daughters and before the son and sons of the younger of such daughters and the heirs of her and their body and respective bodies issuing and in default of such uses to the use of the said A his heirs and assigns for ever." The settlor's four sons all died without leaving issue. The property then passed to a daughter for life. On her death on the 10th June, 1941, the property passed to the children of a deceased daughter, who had left two sons who survived the deceased tenant for life. The elder son executed a deed disentailing his interest in the property. This summons raised the question whether the elder son, on the death of the life tenant, became entitled as tenant in tail male in possession or whether he and his brother took as joint tenants in tail or as tenants in common in tail.

COHEN, J., said that his attention had been called to a number of authorities dealing with the construction of similar limitations. They all dealt with the construction of wills and left no doubt but that, if he were construing a will, he would be bound to hold that the interests were successive and the elder son became entitled as tenant in tail male. A deed however was to be construed more strictly than a will. He must therefore see whether there was any general principle of construction which was applicable not only to wills but also to deeds. The important words in the limitation were the "first and other sons." He thought it was right to say that there was a general principle of construction, not confined to wills, which bound him to hold that these words connoted successive interests. That principle was established by *Lewis* v. *Waters*, 6 East 336, which was followed in *Cradock* v. *Cradock*, 4 Jur. (N.S.) 626. He would accordingly declare that the property had vested in the eldest son as tenant in tail male.

COUNSEL: *Rawlence; H. A. Rose; Myles.*

SOLICITORS: *Dimond & Son; Andrew Purves, Sutton & Creery*, for *Blaker & Peters*, Chichester; *Robins, Hay & Waters.*

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

In re **Schebsman,** *ex parte* **the Official Receiver** *v.* **Cargo Superintendents (London), Ltd.**

Uthwatt, J. 12th July, 1943.

Bankruptcy—Agreement to pay sums to employee's widow and daughter on his death—Bankruptcy and death of employee—Rights of trustee in bankruptcy—Payment to third parties—Whether a voluntary settlement—Bankruptcy Act, 1914 (4 & 5 *Geo. 5, c. 59*), *s.* 42.

Motion.

S was for many years employed by a Swiss company or by its English subsidiary in England. His employment was terminated on the 31st March, 1940. By an agreement dated the 20th September, 1940, made between S and the Swiss and English companies, after reciting it was agreed that compensation should be paid to S for his loss of employment, it was provided that the English company should pay to S £2,000 immediately and a further sum of £5,500 to be paid by six annual instalments. It was further agreed that if S. should die before 1946 certain annual sums, amounting in all to £3,500, should be paid to his widow until 1950, and, if she should die before that date, the payments were to be made to his daughter. S was adjudicated bankrupt on the 5th March, 1942, and died on the 12th May, 1942. By this motion his trustee in bankruptcy claimed that all sums payable under the agreement formed part of the estate of the bankrupt. The widow and daughter of S and the English company were respondents to the motion. The English company was desirous of continuing the payments to the widow and daughter.

UTHWATT, J., said that S. was not in any way a trustee for his wife and daughter. A trust could only arise from an intention to create one, or from acts, generally the wrongful acts, of the person to be charged as trustee. In the present case an intention to create a trust could not be inferred (*In re Engleback* [1942] 2 Ch. 348; *In re Stapleton-Bretherton* [1941] Ch. 482). S, in making the contract, was not acting as agent for his wife and daughter. The result was that S was free to release or waive performance of the contract or to accept substituted performance. The wife and daughter could not sue upon the contract or require S to sue. The question then arose as to the effect of the contract. Was the company to be regarded as a mandatory of S authorised to make payments to the wife and daughter? Ought there to be implied a term that S was to have the right to intercept

payments to the wife and daughter? Should it be construed as if in the covenant to pay were inserted the words "or as S may direct"? Where the instrument could not be construed as implying this phrase, performance might be duly made, and could be required to be made, only in accordance with the written terms (*In re Stapleton-Bretherton, supra*). There was no rule of law under which persons were unable to make a contract for payment to be made to a third party. It was impossible to imply a term in this contract under which S or his sequels in title were to have a right to intercept payments. It was secondly contended that the contract was a voluntary settlement void under s. 42 of the Bankruptcy Act, 1914, against the trustee in bankruptcy. It was argued that the transaction effected by the contract ought to be dissected into two. First, an obligation to pay a sum of money; secondly, an assignment of that chose in action. That assignment was a settlement and covered by s. 42. The transaction was not capable of being dissected in this way. S never became entitled in respect of the sums in question to anything except the right to require payment of the sums to third persons. That right remained vested in the trustee in bankruptcy. The result was the motion failed.

COUNSEL: *Pennycuick; Raeburn; A. T. Denning*, K.C., and *C. R. F. Morris*.

SOLICITORS: *Tarry, Sherlock & King; Morris, Ward-Jones, Kennett & Co.; Albert M. Oppenheimer*.

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

PROBATE, DIVORCE AND ADMIRALTY.

Petty *v.* Petty.

Sir Boyd Merriman, P., and Henn Collins, J. 14th July, 1943.

Divorce—Application for rehearing—Whether error alleged—New evidence profferred after hearing of evidence on both sides and determination by judge—Matrimonial Causes Rules, 1937, *r.* 36.

Wife's application for rehearing, under r. 36 of the Matrimonial Causes Rules, 1937, of a cause tried by Hodson, J. That rule provides: "(1) An application for rehearing of a cause heard by a judge alone where no error of the court at the hearing is alleged shall be made to a Divisional Court of the Probate Division . . . (2) Any other application for rehearing shall be made by way of appeal to the Court of Appeal." The cause was the wife's suit for divorce on the grounds of cruelty and desertion. The husband in his answer asked for a decree of dissolution on the ground of alleged desertion by his wife. It was not disputed that the learned judge's decision to dismiss the wife's petition and find in favour of the husband was based on a plainly stated preference in favour of the credibility of the husband. On behalf of the applicant it was stated that the preparation of her case was to some extent interfered with by enemy action and that she had since the hearing obtained statements from witnesses, the result of whose evidence would induce the court to find that her own evidence was to be believed in preference to that of her husband.

Sir BOYD MERRIMAN, P., said that it would be a strained and artificial interpretation to attach to the word "error" first used in this connection in rules promulgated in 1924 the technical meaning attached to it in proceedings in error, which were abolished fifty years before. On the other hand, special jurisdiction was given by s. 23 of the Matrimonial Causes Act, 1857, to set aside decrees for judicial separation when a party was able to show, that there was reasonable ground on the merits for setting it aside, and further, there was power originally vested in the full court, but subsequently by statute transferred to the Judge Ordinary, to order a new trial where questions of fact had been decided by a jury. (See *Westhead* v. *Westhead*, L.R. 2 P.D. 1, and *Robinson* v. *Robinson*, L.R. 2 P.D. 77.) By s. 9 of the Judicature Act, 1881, the power to grant an application for a new trial was transferred from the full court of this Division to the Court of Appeal, and the only exception to this universal jurisdiction to deal with applications for new trials was the special case provided for by r. 36. His lordship referred with approval to *Manners* v. *Manners* [1936] P. 117; *Winter* v. *Winter* [1942] P. 151; and *Harriman* v. *Harriman* [1909] P. 123. The first two cases, which were the only two reported cases on the subject, so far as his lordship knew, were clearly on the right side of the line, but it was impossible to assert that where a judge had deliberately attached the credibility to one side and not to the other, having seen both spouses and their witnesses, and where the court was asked to say that the production of a document or witness or witnesses would induce some other tribunal to say that the judge believed the wrong set of witnesses, that case was on the same side of the line and was one in which no error at the hearing was alleged. This case was one which quite plainly must be dealt with by the Court of Appeal. The application was misconceived and must be rejected.

HENN COLLINS, J., delivered judgment to the same effect.

COUNSEL: *P. R. Hollins; Walter Lloyd*.

SOLICITORS: *Amphlett & Co.* for *R. V. Stokes & Metcalfe*, Portsmouth; *Gibson & Weldon*, for *Hobson, Thomas & Sherwell*.

[Reported by MAURICE SHARE, Esq., Barrister-at-Law.]

At the monthly meeting of the Directors of the Solicitors' Benevolent Association, held at 60, Carey Street, W.C.2, on 7th July, grants amounting to £2,225 19s. were made to forty-two beneficiaries.

The publishers of THE SOLICITORS' JOURNAL undertake the binding of issues in the official binding covers. The 52 issues for 1942 are bound in one volume, in either green or brown cloth (15s.). Prices for binding earlier volumes will be sent on request. Issues, together with the appropriate Index, should be sent to THE SOLICITORS' JOURNAL, 29/31, Breams Buildings, London, E.C.4.

Rules and Orders.

S.R. & O., 1943, No. 1023/L.19.

SUPREME COURT, ENGLAND.—PROCEDURE.

THE RULES OF THE SUPREME COURT (No. 3), 1943.
DATED JULY 20, 1943.

I, John Viscount Simon, Lord High Chancellor of Great Britain, in exercise of the powers conferred upon me by the Administration of Justice (Emergency Provisions) Act, 1939,* and of all other powers enabling me in this behalf, and with the concurrence of two other Judges of the Supreme Court, do hereby make the following Rules of Court under Section 99 of the Supreme Court of Judicature (Consolidation) Act, 1925.†

1. The following Rule shall be inserted in Order LIX after Rule 26:—

26A.—(1) In applications for attachment in cases where the contempt is committed in connection with proceedings before a court-martial, the procedure shall, subject to paragraphs (2) to (5) of this Rule, be the same as in the applications to which Rule 26 of this Order applies.

(2) An application for leave under Rule 3 of this Order may be made *ex parte* at any time to a judge in chambers in London or on Assize, and an application for attachment may be made by summons and be heard and determined by a single judge in London or on Assize, instead of being made by notice of motion and being heard and determined by a Divisional Court.

(3) The certificate issued by the president of the court-martial in pursuance of section 126 of the Army Act shall accompany the statement and affidavits required by Rule 3 (2) of this Order.

(4) The applicant shall give notice of the application for leave not later than the preceding day to the Crown Office and Associates Department of the Central Office or to the associate of the circuit, as the case may be, and shall at the same time lodge in the said Department or with the associate copies of the certificate, statement and affidavits.

(5) When the application for leave has been heard by a judge on Assize, the associate shall give notice to the said Department of the decision of the judge and of the place and date fixed for a hearing on Assize of the summons for attachment, and the summons, if issued, shall be issued at the said Department in pursuance of Rule 44 (2) of this Order, and if the summons is heard on Assize, the order of the judge shall be drawn up at the Department on receipt of the associate's certificate and the original documents used at the hearing.

(6) This Rule shall apply to proceedings before a service court formed by the United States Army in pursuance of the United States Army (Visiting Forces) Order, 1942, or any other Order made under the United States of America (Visiting Forces) Act, 1942, as it applies to proceedings before a court-martial with the necessary modifications."

2. In Rule 27 of Order LIX the words "Rule 26 of this Order" shall be substituted for the words "the last foregoing Rule."

3. In Rule 14 of Order XXII the words "Liverpool or" wherever they occur in sub-paragraphs (*a*) and (*b*) of paragraph (5) of that Rule, which relates to the transfer of money from the High Court to a County Court, and in paragraph (8) of that Rule shall be omitted.

4. These Rules shall come into operation on the 1st day of August, 1943, except Rule 3 which shall come into operation on the 1st day of October 1943:

Provided that in cases pending in the District Registry in Liverpool on the 1st day of October, 1943, transfers of money from the High Court to a County Court may be carried out as if Rule 3 had not been made.

5. These Rules may be cited as the Rules of the Supreme Court (No. 3), 1943.

Dated the 20th day of July, 1943. *Simon*, C.

We concur, *Caldecote*, C.J.
Greene, M.R.

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* 2 & 3 Geo. 6, c. 78. † 15 & 16 Geo. 5, c. 49.

S.R. & O., 1943, No. 1054/L.20.

SUPREME COURT, ENGLAND.—PROCEDURE.

THE RULES OF THE SUPREME COURT (POOR PERSONS) (No. 2), 1943.
DATED JULY 21, 1943.

I, John Viscount Simon, Lord High Chancellor of Great Britain, in exercise of the powers conferred upon me by the Administration of Justice (Emergency Provisions) Act, 1939,* and of all other powers enabling me in this behalf, and with the concurrence of two other Judges of the Supreme Court, do hereby make the following Rules of Court under Section 99 of the Supreme Court of Judicature (Consolidation) Act, 1925.†

1. The following Rule shall be substituted for Rule 23A of Order XVI:—

"23A. *Grant of certificates to members of H.M.'s Armed Forces.*]—(1) Where the applicant for a certificate is a member of the armed forces of the Crown, the certificate may be signed by two members of a Committee and issued by The Law Society or by a provincial Law Society, as the case may be, certifying:—

(*a*) that the applicant holds a rank not above the rank of petty officer, petty officer wren, or sergeant; and

(*b*) that the applicant does not possess or, where the applicant is a married woman, that she and her husband do not jointly possess (excluding any pay or other emoluments receivable by the applicant as a member of the armed forces of the Crown and, if the husband of the applicant is such a member and holds a rank not above such a rank as aforesaid, excluding any pay or other emoluments so receivable

by him) such an income or such other assets, as in the opinion of the Committee render it unreasonable that the applicant should be admitted as a poor person.

(2) Where the applicant is the wife of a member of the armed forces of the Crown (not being herself such a member) and desires to be admitted as a poor person for the purpose of instituting, defending or being a party to a matrimonial cause, a certificate may be signed and used as aforesaid certifying :—

(*a*) that the husband of the applicant holds a rank not above the rank of petty officer or sergeant ; and

(*b*) that the applicant and her husband do not jointly possess (excluding any pay or other emoluments receivable by the husband as a member of the armed forces of the Crown) such an income, or such other assets, as in the opinion of the Committee render it unreasonable that she should be admitted as a poor person.

(3) Where on an application by a married woman for a certificate under paragraph (1) or paragraph (2) of this Rule, it appears to the Committee that the circumstances of the applicant are such that if the income of her husband were not taken into consideration she would be admissible as a poor person under Rule 23 of this Order, a certificate may be signed and issued admitting her for the purpose for such proceedings only as are necessary to enable her to obtain and enforce an order for security for her costs.

(4) A certificate shall not be issued under this Rule unless the Committee are satisfied that the applicant has reasonable grounds for instituting, defending or being a party to the proceedings.

(5) A certificate shall state the name and address of the conducting solicitor and shall bear the date on which the application is granted by the Committee.

(6) A certificate signed and issued in accordance with the provisions of this Rule shall be deemed to be a certificate under this Order.

(7) For the purposes of this Rule the expression 'member of the armed forces of the Crown' includes a member of the Women's Royal Naval Service, but does not include a member of the Home Guard."

2. Rules 26 and 27 of Order XVI shall be amended by inserting after the words "Rule 23," in each place where those words occur, the words "or Rule 23A."

3. Rule 28A of Order XVI shall be amended by substituting for the words "His Majesty's Forces" in paragraph (1) thereof the words "the armed forces of the Crown" and by substituting for paragraph (5) thereof the following paragraph, namely :—

"(5) In this Rule the expression 'member of the armed forces of the Crown' includes a member of the Women's Royal Naval Service, but does not include a member of the Home Guard."

4. These Rules may be cited as Rules of the Supreme Court (Poor Persons) (No. 2), 1943.

Dated the 21st day of July, 1943. *Simon*, C.

We concur, *Caldecote*, C.J.
Greene, M.R.

* 2 & 3 Geo. 6, c. 78. † 15 & 16 Geo. 5, c. 49.

War Legislation.

Statutory Rules and Orders, 1943.

E.P. 1002. **Bacon** (Rationing) Order, July 19.

E.P. 967. **Containers and Straps** Order, July 19.

E.P. 992. **Control of Fuel** (No. 3) Order, 1942, General Direction (Central Heating and Hot Water Plants) No. 2, July 15.

No. 1024. **Deduction of Income Tax** (Schedule E) (Amendment No. 5) Regulations, July 19.

E.P. 1035. **Defence** (Collecting Societies) Regulations, 1942. Amendment Order in Council, July 22.

E.P. 1033. Defence (Game) Regulations, 1942. Order in Council, July 22, revoking Defence (Game) Regulations, 1942, and making Defence (Game) Regulations, 1943.

E.P. 1031. Defence (General) Regulations, 1939. Order in Council, July 22, adding reg. 48B.

E.P. 1032. Defence (General) Regulations, 1939. Order in Council, July 22, adding reg. 93AA.

E.P. 1034. Defence (Trading with the Enemy) Regulations, 1940. Amendment Order in Council, July 22.

E.P. 1036. **Emergency Powers** (Defence) Act, 1939. Order in Council, July 22, continuing in force the Emergency Powers (Defence) Act, 1939, as amended by subsequent enactments.

E.P. 1053. **Factories** (Luminising) (Health and Safety Provisions) (Amendment) Order, July 14.

E.P. 1003. **Fats, Cheese, Sugar and Tea** (Rationing) Order, July 19.

No. 1012. **Fire Services** (Emergency Provisions). National Fire Service (General) (No. 3) Regulations, July 19.

E.P. 1001. **Food Rationing** (General Provisions) Order, July 19.

E.P. 1006. Food (Points Rationing) (No. 2) Order, July 22.

E.P. 1007. Food Rationing. Rationing (Personal Points) Order, July 20.

E.P. 1015. **Green Vegetables** (Maximum Prices) Order, 1942, and the Fresh Fruit and Vegetables (Restriction on Dealings) Order, 1943. Order, July 20, revoking the General Licence, May 10.

E.P. 909. **Limitation of Supplies** (Miscellaneous) (No. 21) Order, July 19.

E.P. 965. Limitation of Supplies (Miscellaneous) (No. 21) Order, 1943. General Licence, July 19, *re* knives, forks and spoons for use in canteens provided for factory workers.

E.P. 1026. **Livestock** (Restriction on Slaughtering) (No. 2) Order, 1940. Amendment Order, July 22.

E.P. 1027. Livestock (Sales) Order, 1943. Amendment Order, July 22.

E.P. 1004. **Meat** (Rationing) Order, July 19.

No. 1059. **Mechanically Propelled Vehicles** Duty. Agricultural Goods Vehicles (Temporary Relief from Duty) Order, July 22.

E.P. 1009. **Milk** (Scheme of Supply) Order, 1942. Amendment Order, July 19.

No. 1022. **National Health Insurance** (Dental Benefit) Amendment Regulations (No. 2), July 2.

E.P. 1005. **Preserves** (Rationing) Order, July 19.

E.P. 966. **Prohibited Goods.** Miscellaneous Goods (Prohibition of Manufacture and Supply) (No. 4) Order, July 19.

E.P. 991. **Railway Wagons.** Requisitioning of New Privately-owned Railway Wagons Notice, July 16.

E.P. 1008. **Soap** (Licensing of Manufactures and Rationing) (No. 2) Order, 1942. Amendment Order, July 21.

No. 1023/L.19. **Supreme Court, England.** Procedure. The Rules of the Supreme Court (No. 3), July 20.

No. 1054/L.20. Supreme Court, England. Procedure. The Rules of the Supreme Court (Poor Persons) (No. 2), July 21.

No. 969. **Trading with the Enemy** (Specified Persons) (Amendment) (No. 10) Order, July 21.

Provisional Rules and Orders, 1943.

Visiting Forces (British Commonwealth). Visiting Forces (Royal Canadian Air Force) (Provisional) Order in Council, July 22.

Parliamentary News.

House of Commons.

Coal Bill [H.L.].
Read Third Time. [27th July.

Consolidated Fund (Appropriation) Bill [H.C.].
Read Third Time. [3rd August.

Law Reform (Frustrated Contracts) Bill [H.L.].
Read Third Time. [28th July.

Workmen's Compensation (Temporary Increases) Bill [H.C.].
Read First Time. [28th July.

Questions to Ministers.

Home Guards : Estate Duty.

Sir John Mellor asked the Chancellor of the Exchequer whether, in view of the rule which limits pensions payable in respect of Home Guards to the scale applicable to private soldiers, he will take steps to amend s. 8 (1) of the Finance Act, 1894, so as to exempt from estate duty the property of Home Guards, killed on active service, in the same manner as the property of private soldiers is exempted.

Sir Kingsley Wood : I am afraid I could not see my way to adopt my hon. friend's proposal. I would remind my hon. friend that the estate of a Home Guard who is killed on duty or dies as a result of wounds received or disease contracted on duty is entitled to the same relief from estate duty as is given to all members of the Forces by s. 38 of the Finance Act, 1924. The effect of this is to exempt from duty the first £5,000 of his estate and to give a relief on the remainder the amount of which is dependent on his age, provided only that his estate passes to his widow or certain near relations. I could not see my way to adopt a proposal which exempted the whole of his estate unconditionally. [27th July.

Personal Injuries (Emergency Provisions) Act.

Sir Herbert Williams asked the Minister of Pensions whether he will appoint a committee to examine the effect of s. 3 of the Personal Injuries (Emergency Provisions) Act, 1939, under which His Majesty's subjects are deprived of their common law and other rights and having regard to the fact that it was one of six Acts passed through all stages on 3rd September, 1939, and of which hon. Members had had no prior notice.

Sir Walter Womersley : The Personal Injuries (Emergency Provisions) Act, 1939, provided compensation on a uniform basis for civilian personnel suffering war injuries. In many cases no compensation would otherwise have been payable and in some cases it is in substitution for some other form of compensation. The Government considered it reasonable that there should be a standard scheme for all cases covered by the Act and this position would not have resulted if the alternative had been allowed of claiming under other provisions which the Act replaced. [27th July.

Honours and Appointments.

The King has appointed The Hon. Muhammad Munir and Mr. Mehr Chand Mahajan to be Judges of the High Court in Lahore on the retirement of Mr. Justice Tek Chand, and the resignation of Mr. Justice Dalip Singh.

The War Office announces the appointment of Major J. R. Willis as the Secretary of Mr. Justice Oliver's Committee of Inquiry into Detention Barracks. Anyone who wishes to communicate with the committee should write to Major J. R. Willis, care of Mr. Justice Oliver, at the Royal Courts of Justice, Strand.